

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL DOCKET NO.: 5:03CR34**

UNITED STATES OF AMERICA

vs.

RICKY EUGENE EVERHART,

Defendant.

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ORDER

THIS MATTER is before the Court on its own motion. On March 31, 2004, a jury found Defendant guilty of one count of conspiracy to possess with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 841, 846 (Count One), and two counts of possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841 (Counts Two and Three). On December 6, 2004, this Court sentenced Defendant to 360 months imprisonment on Counts One, Two and Three, to run concurrently. Pursuant to *United States v. Hammoud*, 381 F.3d 316 (4th Cir. 2004), the Court also stated an alternative sentence of 180 months imprisonment. Judgment was entered on January 6, 2005.

On February 7, 2006, the United States Court of Appeals for the Fourth Circuit reversed and remanded this case for re-sentencing, finding, in part, that the Court erred in sentencing Defendant because the quantity calculations and enhancements were imposed under the mandatory guideline scheme. Moreover, the Fourth Circuit noted that when the Court imposed the alternative sentence, it did not state that it had considered the factors listed in 18 U.S.C. § 3553(a). The Mandate issued on March 3, 2006.

On June 20, 2006, the Defendant filed a “Sentencing Memorandum; Request for Variance from Sentencing Guideline Range.” To date, the Government has not filed a Sentencing

Memorandum or a response to Defendant's "Sentencing Memorandum; Request for Variance from Sentencing Guideline Range." This case is set for re-sentencing on August 14, 2006, and a response from the Government is needed in order for the Court to fully address the issues raised by Defendant in his Sentencing Memorandum.

Accordingly, **the Court directs the Government to respond to Defendant's "Sentencing Memorandum; Request for Variance from Sentencing Guideline Range" on or before August 7, 2006.**

The Clerk is hereby directed to send a copy of this Order to the United States Attorney and to Defense Counsel.

Signed: August 2, 2006

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees
United States District Judge

